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November 4, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: Ex Parte Notice, CC Docket No. 98-146

Dear Ms. Salas:

Today, Jack Pendleton and I visited with individuals from the Office of Plans and Policy (OPP) and Common Carrier Bureau (CCB). Present at the meeting from GVNW were Jack Pendleton and myself. The following six individuals from the FCC attended the meeting: Robert M. Pepper, Chief, Office of Plans and Policy; Johnson Garrett, Policy Analyst, OPP; Jennifer Fabian, Policy Analyst, CCB; Liz Nightingale, CCB; Staci Pies, CCB; and Daniel Shiman, CCB/Policy. We discussed issues related to rural ILECs providing advanced telecommunications services.

An original and one copy of this ex parte notice are being filed. Please include a copy of this notice in the public record of these proceedings. I have also enclosed one copy to be stamped and returned in the enclosed self-addressed stamped envelope.

Respectfully submitted,

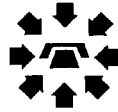
Leslie C. Regier
Jar

Jeffrey H. Smith
Attachments - 1

cc:

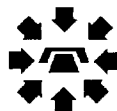
Mr. Johnson Garrett
Office of Plans and Policy
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

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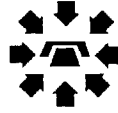
Overview of Discussion

- **Small Company economics are different**
- **Need different rules**
- **Recommend early deployment trials**



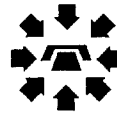
Background issues

- **Comments indicate several impressions**
- **Mergers will not help deployment in rural America**



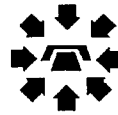
Differences between large and small companies

- **Focus of large companies is Section 271 relief**
 - **USTA mentions “arcane interLATA restrictions”**
- **Should not spillover to 2% companies**



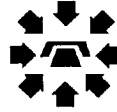
Regulatory overlap issues

- **ATS providers fit several categories**
 - **regulatory uncertainty may be too large a cost in rural low-margin settings**



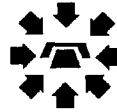
Does FCC approach provide advantage to cable companies?

- **NCTA comments acknowledge cable companies upgrades to provide interactive broadband:**
“ This rapid growth is attributable to the stable and predictable regulatory environment under which cable has recently been operating, as well as the Commission’s “hands off” approach to regulation of the Internet and cable-provided high speed data services.” (NCTA comments at i)



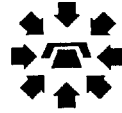
Does this help rural America?

- **Only if you choose to ignore rural citizens who live outside of town**
- **Majority of actual and incipient competition is urban**
- **Many of these competitors not even interested in suburban America (cite examples)**
- **However, rural customers can buy the same Dell computer that someone can buy in a metro area that has a built-in xDSL modem**



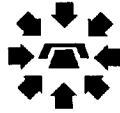
Plenty of attention to urban upscale customers

- **WinStar Communications (wireless 38 GHz system)**
- **New World Paradigm, Ltd. and Khamzin Technologies (integrate local loop and feeder cable into a single 622 Mbps digital path to home and business)**
- **Skybridge LLC (global broadband satellite - “instant broadband to all on the planet”)**
- **Teligent, Inc. (facilities-based broadband offering a last mile alternative that completely bypasses ILECs local loop)**



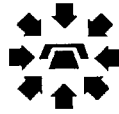
Other CLECs focus on business customers

- **Recent Wall Street Journal article (9/21/98, Nick Wingfield, “No Mercy”) reporting that Covad Communications is targeting only business customers**



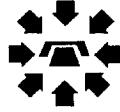
Cost distinctions between creation of subsidiary and cost of entry

- **Costs related to sep. subsidiary less important than unreasonable conditions attached to separate subsidiary**
- **Other costs are more significant in rural context**
 - **cost to deload cable plant (e.g., over \$1m for small 2,000 line company)**



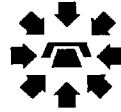
If the FCC persists with a sub requirement, what is untenable with proposal

- **“operate independently” as defined to include no joint switching, structures, as well as precluding contract basis operation, installation, or maintenance functions**
- **separate officers, directors and employees is problematic in many rural situations (GTE suggested that affiliates operating in accordance with 64.1903 be allowed to transfer personnel)**
- **Affiliate unable to obtain credit based on ILEC is a disincentive to deploy ATC/ATS in rural America**



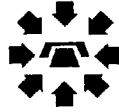
FCC's Part 64 rules provide less onerous options

- **Section 64.1903 is a more reasonable approach related to sharing personnel and credit issues**
- **FCC proposes a “cure worse than the disease”**
- **FCC precedent from Pacific Bell VDT issue in 1995 (ref. 10 FCC Rcd 12448)**
- **- FCC refused requests for specific set of VDT accounting rules**
- **- required CAMs revised prior to VDT (10 FCC Rcd at 12506)**



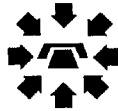
Prior FCC decisions permitted ILECs to achieve certain efficiencies

- **Per the Phase I Order in Computer III (104 FCC2d 958, at para. 96-97) , ILECs are permitted to achieve business efficiencies through joint marketing, one-stop shopping, joint research and product development, and joint realization of overall service efficiencies WITHOUT UNFAIRLY DISADVANTAGING COMPETITORS (emphasis added)**
- **Rules related to network disclosure, equal provisioning, and collocation also relevant**



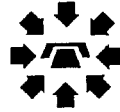
Capability versus service issues

- **Reports such as recent Department of Commerce “The Emerging Digital Economy” make statements to the effect that “ new converged market place of broadcast, telephony and Internet (should) operate based on laws of competition”**
- **Ignores the reality for rural areas that the price of leased transport is such that it is not economical to deploy a central head end due to economics at current transport rates**



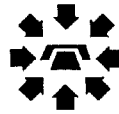
Problems with AT&T analysis

- **AT&T was characteristically cavalier in choosing to ignore 251 (c) differences between those they are locked in a death struggle with and the 2 % companies**
- **Perhaps AT&T is more concerned with proposal for AT&T/TCI to be subject to similar Title II unbundling requirements (If provide same service, regulatory parity and technological parity is needed)**
- **Other commenters suggesting that ILECs vacate administrative space (Northpoint p.23) demonstrate the absurdity of some of the suggestions**



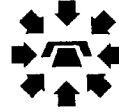
Confiscation issues

- Forcing property owners to suffer the physical occupation of their real estate has often been found to be a taking that must be both authorized and compensated (see Loretto v. Teleprompter Manhattan CATV Corp. , 458 U.S. 419 (1982)).



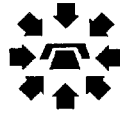
Who will be the provider in rural America ?

- **For rural areas, there may only be one option**
- **ILEC - not without cost support**
- **IXC - doubtful, don't even want urban core areas**
- **CLECs - focused to large markets for now**
- **MVPD - multichannel video providers - ?**
- **TWP - terrestrial wireless providers - probably no**
- **satellite - timing and focus ?**
- **ISPs - in many rural areas, ILEC is the ISP**
- **Private networks - where is the business case?**



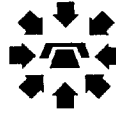
Review of business cases

- **Detailed review of each input**
- **Demonstrate impact of eliminating video**
- **AT&T's assertion that (small) ILECs can profitably enter advanced services market without being shielded from unbundling is unfounded and without merit**



Is DSL becoming part of universal service ?

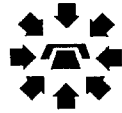
- **What are the national policy issue implications?**
- **If so, regulatory forbearance may not be appropriate**
- **Costs of regulatory management of competition need to be mitigated, but may not be able to be avoided in rural applications**
 - **“sufficient and predictable universal service support” is as important as “procompetitive and deregulatory”**
 - **some of the arguments in USTA and RBOC filings may be more applicable to metropolitan markets**



Arguments about resale and unbundling are universally applicable

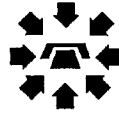
- **We agree with Crandall and Jackson's premise in
Eliminating Barriers to DSL Service (7/98)**

***“If wholesale unbundling or resale were allowed in the
first six or seven years, the ILEC would find it much
more difficult to recover its investment.”***



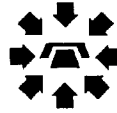
Will HCPM deter advanced services rollout?

- **If the HCPM uses copper T-1 technology, is that compatible with an ADSL world ?**



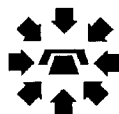
What can the FCC do to promote deployment for rural citizens?

- **Craft rules for rural areas separately**
- **Experimental rules for “early deployment”**



FCC has previously used “pioneer’s preference” concept

- **This is fundamentally different for rural areas than recent RBOC emergency petitions to “solve bandwidth crisis”**
- **Consistent with Chairman Kennard’s comments at Inside Washington Telecom(4/27/98):**
“I, for one, am not afraid of seeing wireline telephone providers have a first mover advantage - - if you make the investments to get to market first....”



Rural LECs should be included in the race to deploy advanced services

- **Commissioner Powell's statement (8/7/98): *"Simply put, we cannot relegate BOCs or other big companies to the sidelines in the data services 'race' unless we are prepared to deny the economy and consumers of the benefits of these companies' expertise and capital."***
- **The corollary is true for small LECs in rural US**